

JUDGE SCHEINDLIN

08 03 21 09:43

CLOSED, TRADE/PATENT/COPY

U.S. District Court
Western District of Kentucky (Louisville)
CIVIL DOCKET FOR CASE #: 3:07-cv-00464-JBC
Internal Use Only

#1

Caudill Seed & Warehouse Co., Inc. v. Brassica Protection
Products LLC
Assigned to: Judge Jennifer B. Coffman
Cause: No cause code entered

Date Filed: 09/04/2007
Date Terminated: 02/27/2008
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

FILED
U.S. DISTRICT COURT
2008 MAR 21 AM 9:43
S.C. D.K.Y.

Plaintiff

Caudill Seed & Warehouse Co., Inc.
doing business as
Caudill Seed Co.

represented by **Ann G. Schoen**
Frost Brown Todd LLC
201 E. Fifth Street
2200 PNC Center
Cincinnati, OH 45202
513-651-6128
Fax: 513-651-6981
Email: aschoen@fbtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas Patrick O'Brien, III
Frost Brown Todd LLC
400 W. Market Street
32nd Floor
Louisville, KY 40202-3363
502-568-0205
Fax: 502-581-1087
Email: tobrien@fbtlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Brassica Protection Products LLC
A CERTIFIED COPY
J. MICHAEL McMAHON, CLERK
BY *Satecia Curtis*
DEPUTY CLERK

represented by **Erin L. Guy**
Stites & Harbison, PLLC
400 W. Market Street
Suite 1800

CERTIFIED
U.S. District Court
Owensboro, KY
Date: 3/4/08
By: *[Signature]*
Deputy Clerk







Louisville, KY 40202-3352
502-779-5812
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Lewis Tate
Stites & Harbison, PLLC
400 W. Market Street
Suite 1800
Louisville, KY 40202-3352
502-587-3400
Fax: 502-587-6391
Email: jtate@stites.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|----------|--|
| 09/04/2007 | <u>1</u> | COMPLAINT against Brassica Protection Products LLC Filing fee \$ 350, receipt number 591936; filed by Caudill Seed & Warehouse Co., Inc.. (Attachments: # <u>1</u> Exhibit A - Patent # Re. 36,784# <u>2</u> Exhibit B - Patent # 5,725,895# <u>3</u> Exhibit C - Patent # 5,968,567# <u>4</u> Exhibit D - Patent # 5,968,505# <u>5</u> Exhibit E - Patent # 6,177,122 B1# <u>6</u> Exhibit F - Patent # 6,521,818 B1# <u>7</u> Exhibit G - Patent # 6,242,018 B1# <u>8</u> Exhibit H - Patent # 6,737,441 B2# <u>9</u> Tendered Summons# <u>10</u> Cover Sheet) (JBM) (Entered: 09/05/2007) |
| 09/04/2007 | <u>2</u> | Case Assignment (Random Selection): Case Assigned to Judge Jennifer B. Coffman. Magistrate designation: Dave Whalin. (JBM) (Entered: 09/05/2007) |
| 09/04/2007 | <u>3</u> | Corporate Disclosure Statement by Caudill Seed & Warehouse Co., Inc.. (JBM) (Entered: 09/05/2007) |
| 09/05/2007 | <u>4</u> | NOTICE of Filing or Determination re: Patent or Trademark re <u>1</u> Complaint. (JBM) (Entered: 09/05/2007) |
| 09/06/2007 | <u>5</u> | Summons Issued as to Brassica Protection Products LLC. (JBM) (Entered: 09/06/2007) |
| 10/04/2007 | <u>6</u> | SUMMONS Returned Executed by Caudill Seed & Warehouse Co., Inc.. Brassica Protection Products LLC served on 9/26/2007, answer due 10/16/2007. (JBM) (Entered: 10/09/2007) |
| 10/11/2007 | <u>7</u> | MOTION for Ann G. Schoen to Appear Pro Hac Vice Filing fee \$ 65, receipt number 610681.by Caudill Seed & Warehouse Co., Inc..Responses due by 10/29/2007 (Attachments: # <u>1</u> Affidavit of Ann G. Schoen# <u>2</u> Proposed Order) (O'Brien, Thomas) (Entered: 10/11/2007) |

| | | |
|------------|-----------|---|
| 10/15/2007 | <u>8</u> | STIPULATION <i>EXTENDING TIME</i> by Brassica Protection Products LLC. (Tate, John) (Entered: 10/15/2007) |
| 11/01/2007 | <u>9</u> | STIPULATION <i>Extending Time</i> by Caudill Seed & Warehouse Co., Inc., Brassica Protection Products LLC. (Tate, John) (Entered: 11/01/2007) |
| 11/15/2007 | <u>10</u> | STIPULATION <i>Extending Time</i> by Caudill Seed & Warehouse Co., Inc., Brassica Protection Products LLC. (O'Brien, Thomas) (Entered: 11/15/2007) |
| 12/06/2007 | <u>11</u> | MOTION to Dismiss <i>Stay or Transfer This Action</i> by Defendant Brassica Protection Products LLC Responses due by 12/24/2007 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Affidavit Powers, # <u>3</u> Exhibit Powers Ex. A, # <u>4</u> Exhibit Powers Ex. B, # <u>5</u> Exhibit Powers Ex C, # <u>6</u> Errata Powers Ex. D, # <u>7</u> Exhibit Powers Ex. E, # <u>8</u> Exhibit Powers - Ex. F, # <u>9</u> Exhibit Powers - Ex. G, # <u>10</u> Exhibit Powers - Ex. H, # <u>11</u> Exhibit Powers - Ex. I, # <u>12</u> Affidavit Talalay - Declaration, # <u>13</u> Exhibit Talalay - Ex. A, # <u>14</u> Exhibit Talalay - Ex. B, # <u>15</u> Exhibit Talalay - Ex. C, # <u>16</u> Exhibit 1 - part 1, # <u>17</u> Exhibit 1 - part 2) (Tate, John) (Additional attachment(s) added on 12/7/2007: # <u>18</u> Proposed Order) (JBM). (Entered: 12/06/2007) |
| 12/20/2007 | <u>12</u> | STIPULATION <i>Extending Time to Reply to Plaintiff's Response to Defendant's Motion to Dismiss, Stay, or Transfer</i> by Brassica Protection Products LLC. (Tate, John) (Entered: 12/20/2007) |
| 12/20/2007 | <u>13</u> | NOTICE by Brassica Protection Products LLC of <i>Filing Memorandum Opinion and Order</i> (Attachments: # <u>1</u> Memorandum Opinion and Order) (Tate, John) (Entered: 12/20/2007) |
| 12/21/2007 | <u>14</u> | RESPONSE to Motion re <u>11</u> MOTION to Dismiss <i>Stay or Transfer This Action</i> filed by Caudill Seed & Warehouse Co., Inc.. Replies due by 1/4/2008. (Attachments: # <u>1</u> Exhibit 1 - Declaration of Dan Caudill 11-20-07, # <u>2</u> Exhibit 2 - Declaration of Dan Caudill 12-21-07, # <u>3</u> Exhibit 3 - 895 Patent, # <u>4</u> Exhibit 4 - 567 Patent, # <u>5</u> Exhibit 5 - 122 Patent, # <u>6</u> Exhibit 6 - 018 Patent, # <u>7</u> Exhibit 7 - Sublicense Agreement 12-06-04, # <u>8</u> Exhibit 8 - New York State Complaint, # <u>9</u> Exhibit 9 - Exhibit of Kelly Kuhl, # <u>10</u> Exhibit 10 - New York Complaint 7844, # <u>11</u> Exhibit 11 - Declaration of Antony Talalay, # <u>12</u> Exhibit 12 - Initial Disclosures of Brassica, # <u>13</u> Exhibit 13 - Initial Disclosures of Caudill Seed, # <u>14</u> Exhibit 14 - Declaration of Thomas P. O'Brien III, # <u>15</u> Proposed Order) (O'Brien, Thomas) (Entered: 12/21/2007) |
| 12/21/2007 | <u>15</u> | MOTION for Preliminary Injunction (<i>Plaintiff's Motion to Enjoin Prosecution of Defendant's Later-Filed Patent Infringement Suit in the Southern District of New York</i>) by Plaintiff Caudill Seed & Warehouse Co., Inc. Responses due by 1/8/2008 (Attachments: # <u>1</u> Exhibit Case Law Part 1, # <u>2</u> Exhibit Case Law Part 2, # <u>3</u> Exhibit Case Law Part 3, # <u>4</u> Exhibit 1 - Declaration of Dan Caudill 11-20-07, # <u>5</u> Exhibit 2 - Declaration of Dan Caudill 12-21-07, # <u>6</u> Exhibit 3 - 895 patent, # <u>7</u> Exhibit 4 - 567 Patent, # <u>8</u> Exhibit 5 - 122 Patent, # <u>9</u> Exhibit 6 - 018 Patent, # <u>10</u> Exhibit 7 - Sublicense Agreement 12-06-04, # <u>11</u> Exhibit 8 - New York State |

| | | |
|------------|-----------|---|
| | | Complaint, # <u>12</u> Exhibit 9 - Declaration of Kelly Kuhl, # <u>13</u> Exhibit 10 - New York Complaint 7844, # <u>14</u> Exhibit 11 - Declaration of Antony Talalay, # <u>15</u> Exhibit 12 - Initial Disclosures of Brassica, # <u>16</u> Exhibit 13 - Initial Disclosures of Caudill Seed, # <u>17</u> Exhibit 14 - Declaration of Thomas P. O'Brien III, # <u>18</u> Proposed Order) (O'Brien, Thomas) (Additional attachment(s) added on 12/26/2007: # <u>19</u> Memorandum in Support) (JBM). (Entered: 12/21/2007) |
| 12/21/2007 | <u>16</u> | BRIEF <i>in Support of Plaintiff's Motion to Enjoin Prosecution of Defendants Later-Filed Patent Infringement Suit in the Southern District of New York</i> by Caudill Seed & Warehouse Co., Inc.. (O'Brien, Thomas) (Entered: 12/21/2007) |
| 12/27/2007 | <u>17</u> | NOTICE OF FILING CASE LAW by Caudill Seed & Warehouse Co. Inc. re <u>14</u> Response to Motion (Attachments: # <u>1</u> Exhibit Case Law Part 1, # <u>2</u> Exhibit Case Law Part 2, # <u>3</u> Exhibit Case Law Part 3) (O'Brien, Thomas) Modified text on 12/28/2007 (JBM). (Entered: 12/27/2007) |
| 01/03/2008 | <u>18</u> | ORDER granting <u>7</u> Motion to Appear Pro Hac Vice. Signed by Judge Jennifer B. Coffman on 01/02/2008. cc:counsel (CSD) (Entered: 01/03/2008) |
| 01/03/2008 | <u>19</u> | STIPULATION AND ORDER by Judge Jennifer B. Coffman on 01/02/2008 that reply re <u>11</u> MOTION to Dismiss <i>Stay or Transfer This Action</i> due 01/09/2008. cc:counsel (CSD) (Entered: 01/03/2008) |
| 01/07/2008 | <u>20</u> | MOTION for Hearing <i>/Oral Argument</i> by Plaintiff Caudill Seed & Warehouse Co., Inc. Responses due by 1/25/2008 (Attachments: # <u>1</u> Proposed Order) (O'Brien, Thomas) (Entered: 01/07/2008) |
| 01/09/2008 | <u>21</u> | REPLY to Response to Motion re <u>11</u> MOTION to Dismiss <i>Stay or Transfer This Action</i> filed by Brassica Protection Products LLC. (Attachments: # <u>1</u> Affidavit Powers Affidavit, # <u>2</u> Exhibit Powers Affidavit-Exhibit A, # <u>3</u> Exhibit Powers Affidavit-Exhibit B, # <u>4</u> Exhibit Powers Affidavit-Exhibit C, # <u>5</u> Affidavit Talalay Declaration, # <u>6</u> Exhibit Unpublished Cases-Part 1, # <u>7</u> Exhibit Unpublished Cases-Part 2) (Tate, John) (Entered: 01/09/2008) |
| 01/10/2008 | <u>22</u> | MOTION for Extension of Time to File Response/Reply <i>and to Postpone Briefing on Caudill's request to enjoin the USDC, Southern District of New York</i> by Defendant Brassica Protection Products LLC Responses due by 1/22/2008 (Attachments: # <u>1</u> Proposed Order) (Tate, John) (Entered: 01/10/2008) |
| 01/22/2008 | <u>23</u> | RESPONSE to Motion re <u>22</u> MOTION for Extension of Time to File Response/Reply <i>and to Postpone Briefing on Caudill's request to enjoin the USDC, Southern District of New York</i> filed by Caudill Seed & Warehouse Co., Inc.. Replies due by 2/5/2008. (Schoen, Ann) (Additional attachment(s) added on 1/23/2008: # <u>1</u> Proposed Order) (JBM). (Entered: 01/22/2008) |

| | | |
|------------|---|---|
| 01/23/2008 |  <u>24</u> | NOTICE by Caudill Seed & Warehouse Co., Inc. re <u>23</u> Response to Motion, <i>of Filing Proposed Order</i> (Attachments: # <u>1</u> Proposed Order) (Schoen, Ann) (Entered: 01/23/2008) |
| 02/12/2008 |  <u>25</u> | ORDER granting <u>22</u> Motion for extension of time. Signed by Judge Jennifer B. Coffman on 02/11/2008. cc:counsel (CSD) Modified link on 2/13/2008 (Mayfield, Jason). (Entered: 02/12/2008) |
| 02/13/2008 |  <u>26</u> | ORDER granting <u>20</u> Motion for Hearing; Motion Hearing re: <u>11</u> Motion to dismiss, stay or transfer set for 2/20/2008 at 4:30 PM in Courtroom before Judge Jennifer B. Coffman.. Signed by Judge Jennifer B. Coffman on 2/13/08. cc:counsel, TC (JBM) (Entered: 02/13/2008) |
| 02/19/2008 |  <u>27</u> | SUPPLEMENT re <u>11</u> Motion to Dismiss,, (Attachments: # <u>1</u> Exhibit A-Supplemental Authority) by Brassica Protection Products LLC. (Tate, John) (Entered: 02/19/2008) |
| 02/27/2008 |  <u>28</u> | MEMORANDUM OPINION AND ORDER by Judge Jennifer B. Coffman on 2/27/08; Amended motion to transfer <u>11</u> is GRANTED; Matter is TRANSFERRED to the USDC-SDNY; Remaining motions are DENIED AS MOOT.cc:counsel. SDNY (JBM) (Entered: 02/27/2008) |
| 02/27/2008 |  <u>29</u> | NOTICE LETTER sent to the USDC-SDNY re <u>28</u> Order Transferring Case (JBM) (Entered: 02/27/2008) |